

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

SOMERVILLE CONSTRUCTION CO., a sole proprietorship, and its alter ego HI-TK, LLC; and SOMERVILLE CONSTRUCTION CO., a sole proprietorship and HI-TK, LLC, single employers,

Case 25-CA-25276

and

INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTSMEN LOCAL NO. 4 OF INDIANA AND KENTUCKY, MERRILLVILLE CHAPTER, AFFILIATED WITH INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTSMEN, AFL-CIO

*Joanne C. Mages, Esq., and Rebekah Ramirez, Esq.,*  
for the General Counsel.

*James D. Masur II Esq. (Locke Reynolds LLP), of*  
Indianapolis, Indiana, for the Respondent.

*Paul T. Berkowitz Esq. (Paul T. Berkowitz & Associates, Ltd.), of Chicago, Illinois, for the*  
Charging Party.

SUPPLEMENTAL DECISION

Statement of the Case

Robert A. Pulcini, Administrative Law Judge. This case was tried in Indianapolis, Indiana, on November 12, 2002. A Decision and Order of the National Labor Relations Board issued on January 29, 2000, affirming the findings of Administrative Law Judge James L. Rose in his recommended decision of November 20, 1998, that certain unfair labor practices occurred in the above-captioned case. An Order from the Seventh Circuit United States Court of Appeal issued on January 19, 2000, affirming the Boards' findings. A compliance specification and notice of hearing then issued on February 20, 2002, to resolve, inter alia, issues of backpay.<sup>1</sup>

At hearing, the parties resolved all outstanding issues related to the compliance specification by entering into a joint stipulation and Motion for Judgment on the pleadings.<sup>2</sup> This stipulation and the Board and Court of Appeals findings constitute the entire record in this matter including the compliance specification as amended by agreement.

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<sup>1</sup> The compliance specification also alleged that the original Respondent Somerville Construction now does business as an entity called HI-TK, LLC, either as an alter ego or as a single employer, or both. (Collectively referred to as the Respondent.)

<sup>2</sup> Respondent withdrew its answer to the compliance specification as part of the stipulation.

On the entire record, I make the following

### Findings of Fact

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#### I. Jurisdiction

10 The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

15 Pursuant to the stipulation, as described, the backpay period ended on May 31, 1998. The now uncontested specification computes the backpay in the amount of \$1,499,941. Similarly, the Fringe benefits are computed as \$1,352,448. The total exposure of the Respondent is \$2,852,389.<sup>3</sup>

20 The individuals identified by the parties as eligible for distribution of the above amounts are set forth in Appendix A of this Supplemental Decision. The manner of distribution will be made according to the usual practices of the Board.

On these findings of fact, I grant the Motion for Judgment on the pleadings and on the entire record issue the following recommended<sup>4</sup>

### ORDER

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30 The Respondent, Somerville Construction Co., and HI-TK, LLC, Indianapolis, Indiana, their officers, agents, successors, and assigns, shall pay to the individuals set out in Appendix A, the total of \$2,852,389 representing backpay in the amount of \$1,499,941 and fringe benefits in the amount of \$1,352,448, making the appropriate deductions for any tax withholding required by State and Federal laws.

Dated, Washington, D.C.

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Robert A. Pulcini  
Administrative Law Judge

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<sup>3</sup> The amounts of monies reflect the application of a formula agreed to by the parties as mirroring industry practice. It is a lump sum that does not rely on the actual hours worked.

50 <sup>4</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.